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In the Supreme Court of the United States

OCTOBER TERM, 1978

MAE LILLIAN BROWN, a/k/a CHI CHI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-25a) is reported at 594 F. 2d 1330.

JURISDICTION

The judgment of the court of appeals (Pet. App. 28a) was entered on February 15, 1979. A petition for rehearing was denied on May 1, 1979 (Pet. App. 30a). The petition for a writ of certiorari was not filed until June 1, 1979, and is therefore out of time under Rule 22(2) of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence at trial was sufficient for the jury to find that petitioner was a participant in the narcotics conspiracy alleged in the indictment.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Oklahoma, petitioner was convicted of conspiring to distribute and to possess with intent to distribute heroin and cocaine, in violation of 21 U.S.C. 846, and was sentenced to four years' imprisonment followed by a five year term of special parole. At the same trial, petitioner was also convicted of the use of a communications facility to aid in the possession and distribution of narcotics, in violation of 21 U.S.C. 843(b), and was sentenced to a concurrent term of three years' imprisonment. The court of appeals affirmed (Pet. App. 1a-23a), with one judge dissenting (*id.* at 24a-25a).

The indictment alleged that petitioner, thirteen co-defendants, and three unindicted co-conspirators, conspired to engage in a narcotics distribution scheme. It was alleged that, pursuant to this scheme, co-conspirator Thompson procured narcotics from co-conspirator Anderson and transportated them to Tulsa, Oklahoma, where they were diluted and repackaged for sale to other co-conspirators (including petitioner) who further diluted the narcotics and sold them to retail customers (Tr. 134-135).

The trial in this case concerned only petitioner and two of her co-defendants (Watson and Maxwell) who were also alleged to be retail distributors in the narcotics conspiracy. The government's principal witness was Karen Brooks, an indicted co-conspirator. Brooks testified that

Thompson, a narcotics wholesaler in the Tulsa area, procured narcotics from Anderson, a California supplier. She stated that she had observed Thompson sell the drugs to the three defendants who were retail narcotics dealers. She also testified that she had worked as a street dealer for Thompson herself and frequently sold as much as $2,000 worth of heroin in a single day (Tr. 287-289, 292-294, 299, 302-304).

Focusing on petitioner's role in the distribution scheme, Brooks stated that petitioner was a retail seller of heroin and cocaine and that on two occasions Brooks had observed petitioner purchase the drugs from Thompson. In one instance, petitioner purchased a quarter-ounce of heroin worth $300, and in another she purchased twice that amount (Tr. 290-291). Brooks also testified that, when she had sold all of her supply of drugs from Thompson, she would refer her customers to petitioner (Tr. 290). Similarly, petitioner called Brooks on occasion when petitioner's customers wanted drugs that petitioner could not supply (Tr. 321). When Thompson was unable to supply petitioner with drugs for resale, he also referred petitioner to Brooks (*ibid.*). Brooks stated that petitioner knew Anderson, the California supplier, and that most of the persons named in the indictment lived in the North Tulsa area and were acquainted with one another (Pet. App. 10a; Tr. 298-299, 303).

In addition to this testimony, the government introduced tape recordings of intercepted telephone conversations between the conspirators. In three of these calls, petitioner requested permission to stop at Thompson's residence to pick up quantities of cocaine (Pet. App. 12a; Tr. 272-275, 445-446, 447-451). In another of the calls, petitioner offered to exchange her mink and suede coat with an unindicted co-conspirator for $1,500 worth of

drugs. This proposed barter for drugs was subsequently discussed with Thompson (Pet. App. 12a; Tr. 427-430, 441-443). During one telephone call between Thompson and another co-conspirator seeking cocaine, Thompson referred the caller to petitioner, explaining that she had just purchased a quantity of the drug (Pet. App. 12a; Tr. 435-437).

ARGUMENT

Petitioner claims (Pet. 2, 8-15) that this evidence fails to establish that she was a knowing participant in the single conspiracy alleged in the indictment. This contention, which involves the application of settled principles of law to the facts of this case, was properly rejected by both courts below (Pet. App. 12a-13a; Tr. 624, 630-631). Further review of this essentially factual issue is unwarranted.

It is well settled that a defendant's membership in an unlawful conspiracy is established by proof that he had a general knowledge of the overall purpose and scope of the conspiracy and voluntarily participated in it. *E.g.*, *United States* v. *Conroy*, 589 F. 2d 1258, 1269-1270 (5th Cir. 1979), petition for cert. pending, No. 78-1700; *United States* v. *Michel*, 588 F. 2d 986, 995 (5th Cir. 1979), petition for cert. pending, No. 78-1498. It is unnecessary to prove that the defendant knew the identity or particular role of each of the other conspirators or knew the details of each of the conspiracy's unlawful activities. *E.g.*, *United States* v. *Michel*, *supra*, 588 F. 2d at 995; *United States* v. *Becker*, 569 F. 2d 951, 961 (5th Cir. 1978), cert. denied, No. 78-143 (Oct. 2, 1978). As this Court explained in *Blumenthal* v. *United States*, 332 U.S. 539, 557 (1947) (footnote omitted):

> Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all of its details or of the participation of others.

In this case, there was substantial evidence showing that petitioner was aware of the existence and aims of the conspiracy alleged in the indictment and voluntarily participated in it.[1] It is obvious that petitioner was aware that Thompson was not the only other link in the wholesale distribution chain. The fact that Thompson was able to provide petitioner with resale quantities of drugs on a recurring basis, as well as her knowledge that he was similarly supplying Brooks, permits the inference that petitioner knew that Thompson had a supplier of his own whose "functions [were] vital to the success of the business." *United States* v. *Moten*, 564 F. 2d 620, 624-625 (2d Cir.), cert. denied, 434 U.S. 959 (1977). See *United States* v. *Burman*, 584 F. 2d 1354, 1356 (4th Cir. 1978), cert. denied, No. 78-5666 (Jan. 12, 1979); *United States* v. *Perry*, 550 F. 2d 524, 529 (9th Cir.), cert. denied, 434 U.S. 827 (1977). As the court of appeals stated in this case, "[w]here large quantities of narcotics are being dis-

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[1]The defendant's knowledge of the existence and aim of the conspiracy can be inferred from the circumstances and the conduct of the parties involved. *United States* v. *Conroy*, *supra*, 589 F. 2d at 1269-1270; *United States* v. *Chandler*, 586 F. 2d 593, 599 (5th Cir. 1978), cert. denied, No. 78-6083 (Feb. 21, 1979). " 'Once it has been established that * * * a particular defendant was clearly connected to the conspiring group or acted in a manner which unmistakably forwarded the conspiracy, then only slight additional evidence suffices to permit an appellate court to find that the jury could reasonably infer that * * * [the] participant was in fact a knowing participant.' " *United States* v. *Michel*, *supra*, 588 F. 2d at 995. Accord, *United States* v. *Kostoff*, 585 F. 2d 378, 380 (9th Cir. 1978); *United States* v. *Becker*, *supra*, 569 F. 2d at 961.

tributed, each major buyer may be presumed to know that he is part of a wide-ranging venture, the success of which depends on the performance by others whose identity he may not even know" (Pet. App. 14a). See *United States* v. *Heath*, 580 F. 2d 1011, 1022 (10th Cir. 1978).[2]

The evidence also demonstrated that petitioner knew that other street dealers were involved in the retail sales network headed by Thompson. Petitioner cooperated extensively with the other retail dealers in distributing the drugs. Brooks, who conducted retail sales from Thompson's residence (Tr. 287-288), referred customers to petitioner when she was out of drugs, and, in return, petitioner would obtain drugs from Brooks for her own customers (Tr. 318-321). Similarly, Thompson referred retail customers to petitioner for drugs and, on one occasion, referred a co-conspirator to her as well (Tr. 321). Petitioner's involvement with other retailers in the distribution scheme was further evidenced by her attempt to barter her expensive coat for a large supply of drugs from another co-conspirator, a proposal that was discussed at some length with Thompson.

Petitioner's contention (Pet. 8-11, 14) that the decision of the court of appeals conflicts with this Court's decision in *Kotteakos* v. *United States*, 328 U.S. 750 (1946), is incorrect. In *Kotteakos* all of the alleged co-conspirators dealt independently with a common loan broker, and there was no evidence that their separate argeements were

[2]The evidence established only that petitioner knew Anderson and did not further show that she knew that Anderson was Thompson's source. But it is unnecessary to prove that petitioner knew the identity of the other conspirators. It is sufficient to show that she was aware of their existence as part of the unlawful enterprise. *Blumenthal* v. *United States*, *supra*, 332 U.S. at 557; *United States* v. *Moten*, *supra*, 564 F. 2d at 625.

part of a larger scheme, or that they knowingly assisted one another in the attainment of a single unlawful result. *Id.* at 754; see *Blumenthal* v. *United States*, *supra*, 332 U.S. at 558. By contrast, the evidence in this case shows that petitioner was aware of the nature and aims of the drug distribution scheme and that she joined with the other participants in effecting its unlawful ends.[3]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[3]The dissenting judge misread the trial record in concluding that "all that the evidence shows is that one Thompson was a major drug dealer in Tulsa, Oklahoma, and that these defendants obtained their supplies (apparently for resale) from him" (Pet. App. 24a). The evidence at trial showed a substantial interrelation and interdependence between petitioner and other retail drug dealers under the direction of Thompson. The evidence thus amply connected petitioner to other participants in the distribution network.

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